Supreme Court, U.S.
FILED
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No. 00-

IN THE

Supreme Court of the United States

RAMÓN CORUGEDO PARTAGAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the government's deliberate delay of over seven years in providing Petitioner with notice and a hearing on Spain's extradition request violated his due process rights under the Fifth Amendment of the United States Constitution.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit opinion is unpublished and is set forth in Appendix A. The district court opinions are also unpublished and are set forth in Appendices B and C.

STATEMENT OF JURISDICTION

The Eleventh Circuit filed its order on September 5, 2000, affirming the judgment of the district court denying Petitioner's Petition for Writ of Habeas Corpus. The Eleventh Circuit filed its order on November 2, 2000, denying the Petition for Rehearing. (Appendix D)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

TREATY INVOLVED

The Treaty Between the United States of America and Spain is set forth in Appendix E.

STATEMENT OF THE CASE

A. Proceedings Below Before the Magistrate Judge

In 1991, the United States received a formal and complete extradition request from Spain for the extradition of Ramón Corugedo ("Corugedo"), a United States citizen. At the time, Corugedo was incarcerated serving a sentence in the United States on unrelated charges. The United States

government took no action on the extradition request, did not inform Corugedo of the extradition request, and postponed all extradition proceedings for over seven years. On the eve of Corugedo completing his sentence, the government finally filed a Complaint for the extradition of Corugedo on June 18, 1999. On July 1, 1999, Corugedo appeared before a federal magistrate and was notified for the first time of the Spanish extradition request. Prior to that date, Corugedo had no knowledge whatsoever of the Spanish charges.

On October 19, 1999, an extradition hearing was held before Magistrate Judge Barry Garber. Magistrate Judge Garber specifically asked the government:

> **The Court:** Why did the government delay 8 and a half, 9 years in affording an extradition hearing here?
>
> **Ms. Rosado:** Because Mr. Corugedo was incarcerated.

See Appellant's Record Excerpts on Appeal to the Eleventh Circuit Court of Appeals at Exhibit F at 25 (hereinafter "R.E. at __").

The government further stated during the extradition hearing:

> **Ms. Rosado:** And it was the United States' decision to wait until he served his sentence here before he is —

See R.E. at Exhibit F at 25. Thus, the government conceded that Spain had initiated its request for Corugedo's extradition

in 1991, and that the United States made a unilateral decision to wait until he finished his sentence to proceed with the extradition.

Magistrate Judge Garber was troubled by the United States' policy of not providing notice of an extradition request to a requested person while he is serving a sentence in the United States. The Magistrate Judge noted:

> **The Court:** But doesn't that have an inherent unfairness about it? Here is someone serving a sentence, and had he been notified of this hearing, he could have perhaps by now long since disposed of the Spanish problems that he had?

See R.E. at Exhibit F at 26. The Magistrate Judge further noted:

> **The Court:** Shouldn't he at least been afforded notice of the fact that there was an extradition proceeding pending against him and let him seek whatever remedy he wanted at that time?

See R.E. at Exhibit F at 27.

Concerned by the lack of procedural fairness in the government's policy, the Magistrate Judge stated:

> **The Court:** Well, it seems to me the policy in the future ought to be better defined. I think one being sought by another government has a right to understand what his rights are, and I think that this case sort of typifies the need for that.

See R.E. at Exhibit F at 28.

Despite recognizing the "inherent unfairness" of the government's decision to conceal Spain's 1991 extradition request from Corugedo until he completed serving his sentence in 1999, the Magistrate Judge issued an Order and Certificate of Extraditability on December 22, 1999. The Magistrate Judge found that such delay did not violate the Sixth Amendment's speedy trial provisions. The Magistrate Judge, however, did not consider the delay in light of the Fifth Amendment's guarantee of due process.

B. Proceedings Below Before the District Court

Corugedo challenged the Order and Certificate of Extraditability by filing a Petition for Writ of Habeas Corpus with the district court. Corugedo again raised the issue that the government's delay in affording him notice and a hearing in 1991 did not comport with constitutional standards of due process. At the hearing, the government again defended its actions by stating that it delayed the commencement of the extradition proceedings because Corugedo was incarcerated. The government further stated that the Treaty did not obligate the government to provide Corugedo with notice and a hearing in 1991. *See* Transcript of hearing held on April 6, 2000, before District Court Judge Moreno at 40-42.

The district court denied Corugedo's petition for *habeas corpus* relief and did not consider Corugedo's constitutional due process claims.

C. Proceedings Below Before the Eleventh Circuit

Corugedo filed a timely appeal with the Eleventh Circuit. Corugedo charged that the district court had erred by failing to apply constitutional due process to the manner in which

the United States responded to the 1991 extradition request. During oral argument, the government again conceded that the government did not provide Corugedo with notice and a hearing on the extradition request based on a long-standing policy not to act upon an extradition request when the requested person is incarcerated in the United States serving a sentence.

The Eleventh Circuit correctly observed that extradition hearings are subject to constitutional constraints and that the district court erred by not addressing Corugedo's due process claims. The Eleventh Circuit, however, rejected Corugedo's claims as meritless, finding that a due process violation could not be founded on the basis of delay alone and that "the diplomatic sensitivity of extradition decisions makes delay in such cases likely."

REASON FOR GRANTING THE WRIT

THE ELEVENTH CIRCUIT'S DECISION THAT EXCESSIVE DELAYS IN COMMENCING EXTRADITION PROCEEDINGS DO NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Extradition proceedings are subject to the constraints of the Constitution, for the actions of the federal government may not encroach on the individual rights protected by constitutional guarantees. *See Martin v. Warden, Atlanta Penitentiary*, 993 F.3d 824, 829 (11th Cir. 1993). Courts have specifically recognized and upheld the right to due process in extradition proceedings. *See United States v. Kin-Hong*,

110 F.3d 103, 106 (1st Cir. 1997) ("There is the ultimate safeguard that extradition proceedings before United States courts comport with the Due Process Clause of the Constitution.").

For this reason, the Eleventh Circuit correctly observed that an extradition proceeding must be conducted in accordance with the Due Process Clause and found that the district court had erred by failing to consider Corugedo's constitutional claims in its *habeas* review. The Eleventh Circuit erred, however, by failing to analyze what process is due in an extradition proceeding. Instead, the Eleventh Circuit summarily concluded that the United States' "delay in notifying Corugedo of Spain's initial extradition request . . . [did] not rise to the level of a due process violation." The Eleventh Circuit explained that "[t]he diplomatic sensitivity of extradition decisions makes delay in such cases likely . . ." The Eleventh Circuit's decision is contrary to the fundamental principle of due process that a prompt notice and hearing is the touchstone of procedural fairness. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1970). Corugedo respectfully seeks that this Court make clear what process is due a person facing extradition on foreign criminal charges.[1]

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1. Because Corugedo presents an important constitutional due process question that merits thorough review, this Court should instruct the government not to deliver Corugedo to Spain pending the disposition of this Petition. If the government transports Corugedo to Spain, the issue will become moot and the Court will have to dismiss the Petition. *See Lindstrom v. Graber*, 203 F.3d 470 (7th Cir. 2000).

A. The Guarantee of Due Process

This Court has recognized that "the fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). To comply with due process, the hearing must be held "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). In the extradition context, these principles require that a person accused of foreign charges receive timely notice that he is sought for extradition and an effective opportunity to challenge the proof upon which the extradition request is based.

Due process under the United States Constitution protects an individual against excessive and prejudicial delay caused by the inaction of the United States government. *See Doggett v. United States*, 505 U.S. 647 (1992) (finding that failure to commence prosecution for over seven years violated due process); *Dickey v. Florida*, 398 U.S. 30, 38-39 (1970) (finding incarceration for one offense does not deprive federal prisoner of right to prompt hearing on second offense); *Moody v. Daggett*, 429 U.S. 78, 92-96 (Stevens, J. dissenting) ("Delay will . . . violate the "fundamental requirement of due process" — "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'").

A person facing a foreign criminal charge is prejudiced by a delay in the extradition process in exactly the same manner and to the same extent that a person in the United States would be prejudiced by delay in commencing a prosecution after an indictment has been returned. For this reason, it is instructive to compare the analysis applied to post-indictment delay in *Doggett v. United States*, 505 U.S. 647 (1992). In *Doggett*, a federal grand jury indicted Doggett

on drug charges in 1980. *See Doggett*, 505 U.S. at 648. Although the government knew that Doggett had been imprisoned in Panama, it failed to make any effort to locate him or serve him with the federal charges. *See id.* at 649-50. Having no notice of the outstanding charges, Doggett returned to the United States and lived openly under his own name. *See id.* Eight and one-half years after his indictment, Doggett was located through a simple credit card check and arrested. *See id.*

The Supreme Court found that the failure of the government to pursue the arrest of Doggett diligently after indictment violated his constitutional rights and precluded further prosecution. *See id.* at 657-58. Based upon a defendant's inability to prepare an adequate defense after a lengthy and unjustifiable delay, the Court found that such a delay created a presumption of prejudice to the defense. Writing for the Court, Justice Souter found that "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter identify." *Doggett*, 505 U.S. at 655.

Similarly, excessive delays in executing an extradition request necessarily violate due process protections because such delays will affect the ability of the individual sought to challenge the extradition request and to respond to a foreign criminal proceeding. Under fundamental principles of due process and fairness, the United States government has an affirmative duty to act upon an extradition request once received. *See Matter of Burt*, 737 F.2d 1477, 1484 (7th Cir. 1984) (citing *Reid v. Covert*, 354 U.S. 1 (1957)). The Due Process Clause requires the government to provide notice to the requested person and hold an extradition hearing promptly after receiving the extradition request. When the

government's conduct in an extradition proceeding does not meet constitutional requirements, a requested person may challenge that conduct. *See Burt*, 737 F.2d at 1477 (finding that federal courts may review constitutional deficiencies in extradition procedures). Therefore, as a matter of constitutional law, the United States may not extradite a person if extradition proceedings were conducted by the United States in a manner that would violate an individual's right to due process of law. *See Plaster v. United States*, 720 F.2d 340, 349 (4th Cir. 1983) (finding that a requested person may not be extradited where "in the opinion of the judiciary, [such extradition would] violate the individual's constitutional rights.").

Here, Corugedo charges that the government's deliberate delay in providing him with notice and a hearing for over seven years after Spain submitted its extradition request violated his due process protections under the Fifth Amendment. Corugedo directly challenges the failure of the United States to inform him of the extradition request when it was made by Spain in 1991 and to provide him with a timely opportunity to address the extradition demand in the courts of the United States. Due to the government's deliberate conduct, Corugedo had no notice whatsoever of the Spanish charges and now faces the prospect of defending himself against stale charges in Spain for alleged criminal acts which occurred over thirteen years ago. Corugedo was entitled under principles of fundamental fairness, as well as under the Treaty itself, to know that the Spanish extradition request was pending and to have an early opportunity to address and possibly resolve the Spanish charges. By depriving Corugedo of prompt notice and a right to be heard on the original extradition request, the government violated Corugedo's fundamental right to due process of law.

Without further explanation, the government defends its conduct by stating that no due process violation occurred because its general policy is to delay the commencement of extradition proceedings when the requested person is serving a United States sentence. The lengthy delay attributable to the government enforcing its policy, however, impeded Corugedo's ability to investigate the Spanish charge and to locate potential witnesses. The delay has presumptively prejudiced Corugedo's ability to defend himself both in the extradition proceedings and before the Spanish court. Therefore, the government's delay violated Corugedo's due process protections.

B. No Diplomatic Necessity Existed

Throughout these proceedings, the government has not articulated any compelling reason for its failure to notify Corugedo or to hold an extradition hearing when it received the request from Spain in 1991. Contrary to the Eleventh Circuit's opinion, the government's decision to delay the extradition hearing was not necessary due to "diplomatic sensitivity." Indeed, the government cannot point to any diplomatic need or comity interest that would require it to delay acting on an extradition treaty request for over seven years. To the contrary, the government's delay has instead harmed diplomatic relations with Spain, as Spain would surely have preferred to have its extradition request acted upon when it was made in 1991. Now Spain has the unenviable task of prosecuting a criminal case that is over thirteen years old due to the United States' unconstitutional conduct.

Moreover, neither treaty obligations nor diplomatic concerns can justify otherwise unconstitutional conduct by

the United States. *See Plaster*, 720 F.2d at 349. In fact, the extradition treaty itself contemplates that the extradition hearing will be held prior to any decision to defer surrender. *See* Treaty at Article VIII ("The requested Party, may, *after a decision on the request has been rendered by a court of competent jurisdiction*, defer the surrender of the person . . . when that person is . . . is serving a sentence in the territory of the requested Party . . . .").

C. Not a "Speedy Extradition" Case

The Eleventh Circuit misunderstood Corugedo's due process violation claim as one for a "speedy extradition." "Speedy extradition" is the term that courts have applied when an extraditee challenges a delay by the requesting state in making an extradition request. *See, e.g., Martin*, 993 F.2d at 824. That is, the concept of "speedy extradition" refers to the time when a foreign nation submits its extradition request, not when the United States acts upon it. Requested persons are not entitled to "speedy extradition" because the Constitution does not impose an obligation on a foreign government to make a prompt extradition request.

Courts have rejected claims for "speedy extradition" under the rule of non-inquiry because they cannot impose constitutional speedy trial guarantees to the timing of a foreign extradition request. *See Martin*, 993 F.2d at 829. In contrast, the conduct of the United States with respect to the person sought must always be assessed in accordance with the constitutional standards of fair play and fundamental decency. *See Burt*, 737 F.2d at 1485.[2] Indeed, the Eleventh

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2. In *Burt*, West Germany first made its extradition request sixteen years after the underlying crime. *See Burt*, 737 F.2d at 1487.

(Cont'd)

Circuit recognized in *Martin* that "[t]he United States' actions in reviewing a request for extradition are, of course, subject to the Constitution." The *Martin* court further held that "[t]he constitutional rights of individuals, *including the right to due process*, are superior to the government's treaty obligations."

Here, Corugedo has not challenged the timing of the Spanish extradition request, but the conduct of the United States in acting upon that request. As a matter of fundamental fairness, Corugedo was entitled to notice of the Spanish criminal charges and a prompt opportunity to address the extradition request at a hearing. Corugedo has asserted more than "mere delay." He has asserted that he was deprived by the United States government of the procedural safeguards that underlie "fundamental conceptions of justice." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

(Cont'd)
Thereafter, the United States did not delay in commencing extradition proceedings. The *Burt* court found that the time that elapsed *between the commission of the crime and the foreign extradition request* did not violate due process because petitioner could not point "to any conduct by the United States that would run afoul of the constitutional limitations on extraditions." *Id.*

CONCLUSION

The government violated Corugedo's due process protection under the Fifth Amendment by delaying the commencement of the extradition proceedings for over seven years. A person facing extradition on foreign charges has due process protections against excessive delay. Contrary to the Eleventh Circuit's decision, lengthy delays in commencing extradition proceedings do violate due process protections and are offensive to fundamental fairness.

For the reasons set forth above, Corugedo respectfully requests that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A — PER CURIAM OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED SEPTEMBER 5, 2000

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-12439

D.C. Docket No. 00-00379-CV-FAM

RAMON CORUGEDO PARTAGAS,
In the Matter of the Extradition of,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(September 5, 2000)

Before COX, WILSON and GIBSON*, Circuit Judges.

PER CURIAM:

Jose Corugedo Partagas ("Corugedo"), a federal prisoner completing a sentence for a narcotics conviction, appeals

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* Honorable John R. Gibson, U. S. Circuit Judge for the Eighth Circuit, sitting by designation.

the district court's denial of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. Corugedo's petition challenges the Order and Certificate of Extraditability the United States has obtained pursuant to the Treaty on Extradition between the United States and Spain (hereinafter "the treaty"). *See* Treaty on Extradition, Jan. 25, 1975, U.S.-Sp., 29 U.S.T. 2283. Corugedo makes four arguments on appeal: 1) that the United States violated Articles VIII and XV of the treaty by failing to afford him a timely extradition hearing, 2) that the district court erred in finding probable cause to support the charges in the extradition request, 3) that the district court erred in failing to hold that extradition was barred by the appropriate statute of limitations, as referenced in the treaty, and 4) that the long delay between the initial extradition request and Corugedo's notice of the request denied him due process of law, and the district court erred in not considering this issue.

Questions of extradition are essentially executive in nature. The judicial power to review extradition proceedings is largely limited to that which is delegated to it by the executive. *See Martin v. Warden, Atlanta Pen*, 993 F.2d 824, 828 (11th Cir. 1993). Habeas corpus review of certificates of extraditability is similarly limited; the review is restricted to determining "whether the magistrate had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925); *Yapp v. Reno*, 26 F.3d 1562, 1564 (11th Cir. 1994).

The record makes it clear that the magistrate had jurisdiction over the extradition hearing, that the offense with

which Corugedo was charged, narcotics trafficking, fell within the treaty, and that there is an affidavit signed by an alleged co-defendant containing sufficient information to establish probable cause to support the charge in Spain. Judicial review of extradition hearings is limited to this inquiry, which the district court conducted properly. We find no error in the district court's application of the *Fernandez* standard to the facts of the present case.

We review Corugedo's constitutional claim *de novo*. *See id.* at 1565. Extradition hearings are subject to the constraints of the Constitution, and courts may review extradition proceedings for constitutional infirmities. *See Martin v. Warden, Atlanta Pen*, 993 F.3d at 829. The district court did not consider the constitutionality of Corugedo's certification hearing, and appellant is correct to note that such an inquiry should have been conducted. However, an evaluation of the due process claim reveals that it is without merit. Extradition proceedings are civil matters, and as such, are subject to fewer constitutional requirements than are criminal cases. *See id.* at 829. The diplomatic sensitivity of extradition decisions makes delay in such cases likely, and no court has found a due process violation on the basis of delay in extradition alone. Indeed, the circuits that have considered the matter have rejected recognizing a due process right to a speedy extradition. *See In re: Burt*, 737 F.2d 1477, 1486 (7th Cir. 1984); *Jhirad v. Ferrandina*, 536 F.2d 478, 485 n.9 (2nd Cir. 1974). We conclude that the delay in notifying Corugedo of Spain's initial extradition request does not rise to the level of a due process violation.

AFFIRMED.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-12439

District Court Docket No. 00-00379-CV

RAMON CORUGEDO PARTAGAS,
In the Matter of the Extradition of,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before COX, WILSON and GIBSON*, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

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* Honorable John R. Gibson, U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

Appendix A

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED.

Entered: September 5, 2000
For the Court: Thomas K. Kahn, Clerk

By: s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: NOV 13 2000

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DENYING PETITION FOR WRIT OF *HABEAS CORPUS* DATED AND FILED APRIL 28, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-0379-CIV-MORENO

IN RE THE MATTER OF THE EXTRADITION OF
RAMÓN CORUGEDO PARTAGAS,

ORDER DENYING PETITION FOR WRIT OF *HABEAS CORPUS*

Ramon Corugedo Partagas filed a petition for Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2241 to bar his extradition to Spain. The Court has reviewed the transcript of the October 19, 1999, extradition hearing before Magistrate Judge Barry Garber and all exhibits and affidavits. It is clear that Spain indeed intends to extradite the petitioner.

Habeas corpus review of an extradition order by a magistrate judge is limited to whether the Court had jurisdiction, whether the offense charged is within the treaty and whether there is sufficient evidence of guilt. *Martin v. Warden, Atlanta Pen.*, 993 F.2d 824 (11th Cir. 1993). The record here complies with those requirements. Therefore extradition is not precluded on constitutional grounds.

WHEREFORE IT IS ADJUDGED, that the petition for Writ of *Habeas Corpus* is **DENIED**. Of course, the

petitioner is free to pursue other extrajudicial remedies through the executive branch. It is also

ADJUDGED that this Court's Order setting bond is **VACATED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of April, 2000.

s/ Federico A. Moreno
FEDERICO A. MORENO
UNITED STATES DISTRICT
JUDGE

APPENDIX C — ORDER AND CERTIFICATE OF EXTRADITABILITY OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DATED DECEMBER 22, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-1709-CIV-Garber

IN THE MATTER OF THE EXTRADITION OF
RAMON CORUGEDO PARTAGAS.

ORDER AND CERTIFICATE OF EXTRADITABILITY

THIS CAUSE was before the Court on the Complaint brought against the respondent Ramon Corugedo Partagas (Corugedo) by the United States Attorney for the Southern District of Florida, acting for and on behalf of the Government of Spain.

Underlying Facts

Papers submitted by the Spanish government reflect that the respondent Corugedo participated in a significant drug trafficking organization in Spain since 1987. It was claimed that Corugedo and others brought cocaine from Colombia to Spain and thereafter distributed it in Spain and in other parts of Europe. Such assertions were made by a cooperating co-defendant, de Temple, who has implicated the respondent.

Thereafter, in 1988 Spanish judicial proceedings commenced and in December, 1990 the respondent was

indicted in Spain and a warrant for his arrest issued. On or about June 13, 1991 the Spanish government requested the provisional arrest of respondent pursuant to the extradition treaties in effect between Spain and the United States. On July 11, 1991 the government of Spain instituted formal extradition proceedings and requested INTERPOL to issue an international arrest warrant.

The Spanish Court, in August of 1991, indicated that it knew that the respondent was in prison in the United States and authorized the Spanish government to submit a request to the United States through diplomatic channels for the extradition of the respondent. Such request was supported by documents submitted by the Spanish Embassy in November of 1991. However, at the direction of the Office of International Affairs, the extradition papers were returned to the Spanish authorities for revision and re-submission.

In January, 1998 Spain submitted a diplomatic note supporting its request for the extradition of the respondent and the supporting documents were thereafter submitted. On June 18, 1999 the United States Attorney, on behalf of the Spanish government, filed a complaint with this Court for the extradition of the Respondent and for the issuance of a warrant for his arrest. Such warrant was issued, and respondent was arrested on June 18, 1999. He has remained in custody since that date and his application for bond was denied.

Issues Raised by Respondent

Essentially, respondent's counsel controverts these extradition proceedings claiming that the United States and

Appendix C

Spain's statutes of limitations and post-indictment delay are a bar to the certification for extradition of the respondent to Spain. Such argument is unavailing here.

The respondent was indicted on December 26, 1990 for offenses alleged to have taken place in 1987. The period from the alleged commission of the offenses and the date of indictment is within the permissible five year statutory limitational period under United States law.

As to claims of bar by the Spanish period of limitations, the government has submitted an authenticated statement from the Honorable Juan del Olmo Galvez, a Spanish criminal court judge, who states that the last day of the period of Spanish limitations for the drug trafficking offense charged against the respondent is December 26, 2000. The Spanish statute of limitations begins to run on the date of the offenses charged (1987), but was tolled and recommenced for a ten year period on December 26, 1990 because the Spanish court determined that the criminal proceedings were paralyzed.

Accordingly, this Court finds that the duly and properly authenticated statement of a Spanish judicial officer is reliable and unrebutted as to the conclusion that the Spanish statute of limitations does not constitute a bar to these proceedings.

Respondent's argument that the Sixth Amendment of the United States Constitution was violated because of post-indictment delay is neither compelling nor valid. Any delay in these proceedings cannot be deemed to be the fault of Spain, the demanding country. The respondent was indicted

in Spain in December of 1990 and extradition proceedings were commenced in June of 1991. Respondent's reliance on *United States v. Doggett*, 505 U.S. 647 (1992) and *In Re Mylonos*, 187 F.Supp. 716 (N.D. Ala. 1960) is misplaced. In *Doggett*, a criminal prosecution by the United States was involved as compared with this extradition proceeding, where the prosecution is to take place in Spain.

Mylonos was rejected by the Eleventh Circuit and controlling law. The Eleventh Circuit, in *Martin v. Warden*, 993 F.2d 824 (11th Cir. 1993), permitted extradition to Canada eighteen years after the offense with which he was charged.

There is no United States constitutional right to a "speedy extradition." *McMaster v. United States*, 9 F.3d 47 (8th Cir. 1993). In *McMaster*, there was a period of thirteen years between the request for extradition and certification for extradition.

DISCUSSION

In these proceedings an Extradition Treaty was and is in effect at all times involved in this cause. The Extradition Treaty between the United States and Spain of May 29, 1970, modified by the Supplementary Treaty of January 25, 1975, modified by the Second Supplementary treaty of February 9, 1998 are applicable here. The legal right of a foreign country to demand the return of a fugitive, as well as the legal duty imposed on the United States to comply, depends upon the existence of such treaties. *Factor v. Laubenheimer*, 290 U.S. 276 (1933); *In re United States*, 713 F.2d 195 (5th Cir. 1983).

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It is not the function of this Court to determine innocence or guilt but to determine whether probable cause exists to hold and deliver the respondent to the demanding country. *Escobedo v. United States*, 623 F.2d 1098 (5th Cir.), *cert. denied*, 449 U.S. (1980). An extradition hearing is akin to a preliminary hearing.

In order for extradition to be appropriate, the following elements must be shown: (1) that this Court has subject matter and personal jurisdiction; (2) that a valid treaty is in effect between the United States and Spain; (3) that criminal charges are presently pending in Spain; (4) that the offenses charged are included within the extradition treaty; (5) that the respondent is in fact the person accused of the charged offenses; and, (6) that probable cause has been shown that the respondent committed the offenses with which he is charged.

This Court derives its subject matter Jurisdiction from 18 U.S.C. §3184, which provides *inter alia* that "any justice or judge of the United States, or any magistrate authorized so to do by a Court of the United States" may order the arrest of a foreign fugitive to compel his appearance for an extradition hearing. The arrest of the respondent in this district provides this Court with personal jurisdiction.

It is undisputed that a valid Extradition Treaty was and is in force and governs these proceedings. Respondent does not dispute the existence of such Treaty.

The documentation provided to this Court by the United States clearly notifies this Court that criminal charges are

lodged against the respondent and are presently pending in Spain. The Extradition Treaty in force clearly includes the offenses with which respondent is charged, such offenses having been set forth in Article II of the Treaty. Respondent has not challenged this issue.

The Court has had the opportunity of examining a photograph of the person sought by Spain in these proceedings. From such examination the Court is satisfied that respondent Ramon Corugedo Partagas is the person depicted in the photograph and is the person sought by Spain in these extradition proceedings.

The Court finds that the government has met its burden of establishing probable cause that the respondent committed the crimes charged. It is not necessary for the Court to be presented with evidence that would justify a conviction. Only probable cause need be shown. *Fernandez v. Phillips*, 268 U.S. 312; *Mirchandandi v. United States*, 836 F.2d 1223 (9th Cir. 1988). The Court must merely determine whether there is any evidence establishing probable cause. This Court is satisfied that sufficient evidence has been presented through the government's submissions that clearly establish probable cause.

Conclusion

The government has met its burden in satisfying the requirements discussed above and the respondent must be returned to Spain for proceedings on the charges pending against him. Accordingly, it is hereby

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CERTIFIED, pursuant to 18 U.S.C. § 3184, that the evidence presented is sufficient to sustain the charges against the respondent Ramon Corugedo Partagas under the provisions of the Extradition Treaty in force between the United States of America and Spain, and that a warrant issue upon the requisition of the proper authorities of the government of Spain, for the surrender of the said Ramon Corugedo Partagas, according to the stipulations of the treaty or convention. It is further

ORDERED that the said Ramon Corugedo Partagas is hereby committed to a proper jail, there to remain until such surrender to the appropriate authorities from Spain shall be made. It is further

ORDERED that a copy of the transcript of all the testimony, if any, be transmitted to the Secretary of State in due course.

DONE AND ORDERED in chambers at Miami, Florida this 22nd day of December, 1999.

s/ Barry L. Garber
BARRY L. GARBER
UNITED STATES MAGISTRATE JUDGE

APPENDIX D — PER CURIAM ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED NOVEMBER 2, 2000

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-12439-DD

RAMON CORUGEDO PARTAGAS,
In the Matter of the Extradition of,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, __ F.2d __).

Before: COX, WILSON and GIBSON*, Circuit Judges.

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* Honorable John R. Gibson, U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

Appendix D

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ [illegible]
UNITED STATES CIRCUIT JUDGE

APPENDIX E — TREATY AND SUPPLEMENTARY CONVENTION ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

TREATY ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

The President of the United States of America

and

The Chief of State of Spain, desiring to make more effective the cooperation of the two countries in the repression of crime through the rendering of maximum assistance in matters of extradition,

Have decided to conclude a Treaty and to this end have named as their representatives:

The President of the United States of America, The Honorable William P. Rogers, Secretary of State,

The Chief of State of Spain, His Excellency Señor Gregorio Lopez Bravo de Castro, Minister of Foreign Affairs, who have agreed as follows:

ARTICLE I

In accordance with the conditions established in this Treaty, each Contracting Party agrees to extradite to the other, for prosecution or to undergo sentence, persons found in its territory who have been charged with or convicted of any of the offenses mentioned in Article II of this Treaty committed within the territory of the other, or outside thereof under the conditions specified in Article III.

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ARTICLE II

A. Persons shall be delivered up according to the provisions of this Treaty for any of the following offenses provided that these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year:

1. Murder; infanticide; parricide; manslaughter.

2. Abortion.

3. Rape; statutory rape; indecent assault, including sodomy and unlawful sexual acts with or upon minors under the age specified by the penal laws of both Contracting Parties.

4. Aggravated injury or mutilation.

5. Procuration.

6. Willful nonsupport or willful abandonment of a child or spouse when for that reason the life of that child or spouse is or is likely to be endangered.

7. Bigamy.

8. Kidnapping or abduction; child stealing; false imprisonment.

9. Robbery or larceny or burglary; housebreaking.

10. Embezzlement; malversation; breach of fiduciary relationship.

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11. Obtaining money, valuable securities or property, by false pretenses, by threat of force or by other fraudulent means including the use of the mails or other means of communication.

12. Any offense relating to extortion or threats.

13. Bribery, including soliciting, offering and accepting.

14. Receiving or transporting any money, valuable securities or other property knowing the same to have been obtained pursuant to a criminal act.

15. Any offense relating to counterfeiting or forgery; making a false statement to a government agency or official.

16. Any offense relating to perjury or false accusation.

17. Arson; malicious injury to property.

18. Any malicious act that endangers the safety of any person in a railroad train, or aircraft or vessel or bus or other means of transportation.

19. Piracy, defined as mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel, any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.

20. Any offense against the bankruptcy laws.

21. Any offense against the laws relating to narcotic drugs, psychotropic drugs, cocaine and its derivatives, and

other dangerous drugs, including cannabis, and chemicals or substances injurious to health.

22. Any offense relating to firearms, explosives, or incendiary devices.

23. Unlawful interference in any administrative or juridical proceedings by bribing, threatening, or injuring by any means, any officer, juror, witness, or duly authorized person.

B. Extradition shall also be granted for participation in any of the offenses mentioned in this article, not only as principal or accomplices, but as accessories, as well as for attempt to commit or conspiracy to commit any of the aforementioned offenses, when such participation, attempt or conspiracy is subject, under the laws of both Parties, to a term of imprisonment exceeding one year.

C. If extradition is requested for any offense listed in paragraphs A or B of this article and that offense is punishable under the laws of both Contracting Parties by a term of imprisonment exceeding one year, such offense shall be extraditable under the provisions of this Treaty whether or not the laws of both Contracting Parties would place that offense within the same category of offenses made extraditable by paragraphs A and B of this article and whether or not the laws of the requested Party denominate the offense by the same terminology.

D. Extradition shall also be granted for the above mentioned offenses, even when, in order to recognize the

competent federal jurisdiction, circumstances such as the transportation from one State to another, have been taken into account and may be elements of the offense.

ARTICLE III

A. For the purposes of this Treaty the territory of a Contracting Party shall include all territory under the jurisdiction of that Contracting Party, including airspace and territorial waters and vessels and aircraft registered in that Contracting Party if any such aircraft is in flight or if any such vessel is on the high seas when the offense is committed. For purposes of this Treaty an aircraft shall be considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

B. Without prejudice to paragraph A, 1 of Article V, when the offense for which extradition has been requested has been committed outside the territory of the requesting Party, extradition may be granted if the laws of the requested Party provide for the punishment of such an offense committed in similar circumstances, and if the person whose surrender is sought is not also the subject of a request from another state whose jurisdiction over the person may take preference for territorial reasons and in respect of which there exists an equal possibility of acceding to a request for extradition.

ARTICLE IV

Neither of the Contracting Parties shall be bound to deliver up its own nationals, but the executive authority of

the United States and the competent authority of Spain shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.

ARTICLE V

A. Extradition shall not be granted in any of the following circumstances:

1. When the person whose surrender is sought is being proceeded against or has been tried and discharged or punished in the territory of the requested Party for the offense for which his extradition is requested.

2. When the person whose surrender is sought has been tried and acquitted or has undergone his punishment in a third State for the offense for which his extradition is requested.

3. When the prosecution or the enforcement of the penalty for the offense has become barred by lapse of time according to the laws of either of the Contracting Parties.

4. When the offense in respect of which the extradition is requested is regarded by the requested Party as an offense of a political character, or that Party has substantial grounds for believing that the request for extradition has been made for the purpose of trying or punishing a person for an offense of the above mentioned

character. If any question arises as to whether a case comes within the provisions of this subparagraph, the authorities of the Government on which the requisition is made shall decide.

5. When the offense is purely military.

B. For the purposes of the application of subparagraph A, 4 of this article, the attempt, whether consummated or not, against the life of the Head of State or of a member of his family shall not be considered a political offense or an act connected with such an offense.

C. For the same purposes of application of subparagraph A, 4 of this article an offense committed by force or intimidation on board a commercial aircraft carrying passengers in scheduled air services or on a charter basis, with the purpose of seizing or exercising control of such aircraft, will be presumed to have a predominant character of a common crime when the consequences of the offense were or could have been grave. The fact that the offense has endangered the life or jeopardized the safety of the passengers or crew will be given special consideration in the determination of the gravity of such consequences.

ARTICLE VI

If a request for extradition is made under this Treaty for a person who at the time of such request is under the age of eighteen years and is considered by the requested Party to be one of its residents, the requested Party, upon a determination that extradition would disrupt the social

readjustment and rehabilitation of that person, may recommend to the requesting Party that the request for extradition be withdrawn, specifying the reasons therefor.

ARTICLE VII

When the offense for which the extradition is requested is punishable by death under the laws of the requesting Party, extradition shall be denied unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

ARTICLE VIII

The requested Party may, after a decision on the request has been rendered by a court of competent jurisdiction, defer the surrender of the person whose extradition is requested when that person is being proceeded against or is serving a sentence in the territory of the requested Party for an offense other than that for which extradition has been requested until the conclusion of the proceedings and the full execution of any punishment he may be or may have been awarded.

ARTICLE IX

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with this Treaty and with the law of the requested Party. The person whose extradition is sought shall have the right to use such remedies and recourses as are provided by such law.

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ARTICLE X

A. The request for extradition shall be made through the diplomatic channel.

B. The request shall be accompanied by:

1. A description of the person sought;

2. A statement of the facts of the case;

3. The text of the applicable laws of the requesting Party including the law defining the offense, the law prescribing the punishment for the offense, and the law relating to the limitations of the legal proceedings or the enforcement of the penalty for the offense.

C. 1. When the request relates to a person already convicted, it must be accompanied by:

When emanating from the United States, a copy of the judgment of conviction and of the sentence, if it has been passed; or

When emanating from Spain, a copy of the sentence.

2. In any case, a statement showing that the sentence has not been served or how much of the sentence has not been served shall accompany the request.

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D. When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting Party.

The requested Party may require the requesting Party to produce prima facie evidence to the effect that the person claimed has committed the offense for which extradition is requested. The requested Party may refuse the extradition request if an examination of the case in question shows that the warrant is manifestly ill-founded.

E. If a question arises regarding the identity of the person whose extradition is sought, evidence proving the person requested is the person to whom the warrant of arrest or sentence refers shall be submitted.

F. The documents which, according to this article, shall accompany the extradition request, shall be admitted in evidence when:

In the case of a request emanating from Spain they bear the signature of a judge or other juridical or public official and are certified by the principal diplomatic or consular officer of the United States in Spain; or

In the case of a request emanating from the United States they are signed by a judge, magistrate or officer of the United States and they are sealed by the official seal of the Department of State and are certified by the Embassy of Spain in the United States.

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G. The documents mentioned in this article shall be accompanied by an official translation into the language of the requested Party which will be at the expense of the requesting Party.

ARTICLE XI

A. In case of urgency a Contracting Party may apply to the other Contracting Party for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. This application may be made either through the diplomatic channel or directly between the respective Ministries of Justice.

B. The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction or sentence against that person, and such further information, if any, as may be required by the requested Party.

C. On receipt of such an application the requested Party shall take the necessary steps to secure the arrest of the person claimed.

D. A person arrested upon such an application shall be set at liberty upon the expiration of 30 days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article X shall not have been received. However, this stipulation shall not prevent the institution of proceedings with a view of extraditing the person sought if the request is subsequently received.

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ARTICLE XII

If the requested Party requires additional evidence or information to enable it to decide on the request for extradition, such evidence or information shall be submitted to it within such time as that Party shall require.

If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested Party, he shall be discharged from custody. However, such discharge shall not bar the requesting Party from submitting another request in respect of the same or any other offense.

ARTICLE XIII

A person extradited under the present Treaty shall not be detained, tried or punished in the territory of the requesting Party for an offense other than that for which extradition has been granted nor be extradited by that Party to a third State unless:

1. He has left the territory of the requesting Party after his extradition and has voluntarily returned to it;

2. He has not left the territory of the requesting Party within 45 days after being free to do so; or

3. The requested Party has consented to his detention, trial, punishment or to his extradition to a third State for an offense other than that for which extradition was granted.

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These stipulations shall not apply to offenses committed after the extradition.

ARTICLE XIV

A Party which receives two or more requests for the extradition of the same person either for the same offense, or for different offenses, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the existing circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offense, the place where the offense was committed, the nationality of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested Party and the other requesting State or States.

ARTICLE XV

The requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition.

In the case of a complete or partial rejection of the extradition request, the requested Party shall indicate the reasons for the rejection.

If the extradition has been granted, the authorities of the requesting and requested Parties shall agree on the time and place of the surrender of the person sought. Surrender shall take place within such time as may be prescribed by the laws of the requested Party.

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If the person sought is not removed from the territory of the requested Party within the time prescribed, he may be set at liberty and the requested Party may subsequently refuse to extradite that person for the same offense.

ARTICLE XVI

To the extent permitted under the law of the requested Party and subject to the rights of third Parties, which shall be duly respected, all articles acquired as a result of the offense or which may be required as evidence shall, if found, be surrendered upon the granting of the extradition request.

Subject to the qualifications of the first paragraph, the above mentioned articles shall be returned to the requesting Party even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

ARTICLE XVII

Expenses related to the transportation of the person sought shall be paid by the requesting Party. The appropriate legal officers of the country in which the extradition proceedings take place shall, by all legal means within their power, assist the requesting Party before the respective judges and magistrates.

No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the requested Party against the requesting Party.

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ARTICLE XVIII

The ratifications of this Treaty shall be exchanged in Washington as soon as possible.

This Treaty shall enter into force upon the exchange of ratifications and will continue in force until either Contracting Party shall give notice of termination to the other, which termination shall be effective six months after the date of receipt of such notice.

This Treaty shall terminate and replace the Extradition Treaty between the United States and Spain signed at Madrid June 15, 1904 and the Protocol thereto signed at San Sebastian August 13, 1907; however, the crimes listed in that Treaty and Protocol committed prior to the entry into force of this Treaty shall nevertheless be subject to extradition pursuant to the provisions of that Treaty and Protocol.

In witness whereof the Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate, in the English and Spanish languages, both equally authentic, at Madrid this twenty-ninth day of May, one thousand nine hundred seventy.

For the United States of America:

WILLIAM P. ROGERS

For Spain:

GREGORIO LOPEZ BRAVO

Appendix E

Supplementary Convention On Extradition Between United States Of America And Spain

The President of the United States of America and the Chief of the State of Spain, desiring to make more effective the cooperation of the two countries in the repression of crime through the rendering of maximum assistance in matters of extradition.

Have decided to conclude a Supplementary Treaty on Extradition to amend the Treaty of Extradition signed at Madrid on May 29, 1970, hereinafter referred to as the 1970 Treaty, and to this end have named as their representatives:

The President of the United States of America:

Samuel D. Eaton, Esquire, Chargé d'Affaires ad interim,

The Chief of State of Spain:

His Excellency Señor D. Pedro Cortina Mauri, Minister of Foreign Affairs,

who, after having exchanged their full powers, found to be in good and due form, have agreed as follows:

Article I

Paragraph D of Article XI of the 1970 Treaty is revised as follows:

> A person arrested upon such an application shall be set at liberty upon the expiration of 45 days from the date when the Embassy of the country

seeking extradition is informed through diplomatic channels of the fact of his arrest if a request for his extradition accompanied by the documents specified in Article X shall not have been received. However, this stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE II

This Supplementary Treaty is subject to ratification and the instruments of ratification shall be exchanged in Washington as soon as possible.

This Supplementary Treaty shall enter into force upon the exchange of instruments of ratification and shall cease to be effective on the date of the termination of the 1970 Treaty.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Supplementary Treaty and have hereunto affixed their seals.

Done in duplicate, in the English and Spanish languages, both equally authentic, at Madrid this twenty-fifth day of January, one thousand nine hundred seventy-five.

FOR THE UNITED STATES OF AMERICA:

[signed]
Samuel D. Eaton

FOR SPAIN:

[signed]
D. Pedro Cortina Mauri